

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	Facility ID No. 91339
GRACE BAPTIST CHURCH)	NAL/Acct. No. MB200741410107
)	FRN: 0009461716
Licensee of Station WBLW(FM))	File No. BRED-20050124AGB
Gaylord, Michigan)	

FORFEITURE ORDER

Adopted: June 14, 2010

Released: June 15, 2010

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) to Grace Baptist Church (“Licensee”), licensee of Station WBLW(FM) (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”) by failing to timely file a license renewal application and engaging in unauthorized operation of the Station.¹

II. BACKGROUND

2. On January 31, 2007, the Bureau granted the Station license renewal application and issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of seven thousand dollars (\$7,000) to Licensee for the above violations.² As noted in the *NAL*, Licensee’s renewal application for the Station’s license was due on June 1, 2004, four months prior to the October 1, 2004, expiration date.³ Licensee did not file the application until January 24, 2005.⁴ Licensee did not seek Special Temporary Authority (“STA”) to continue Station operation.⁵

3. In response to the *NAL*, Licensee requested a reduction or cancellation of the *NAL*, arguing that: (1) “[t]he two violations for failing to file a renewal application and unauthorized operation are the same act and therefore the separate forfeitures . . . are duplicative”; (2) Licensee was inexperienced in dealing with and unadvised about FCC regulations; and (3) the proposed forfeiture “would be over twice [Licensee’s] overall surplus for the past three years,” essentially a financial hardship.⁶ The Letter also includes notarized profit and loss statements for 2004–06.⁷

¹ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

² *Grace Baptist Church*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4005 (MB 2007).

³ *Id.* See 47 C.F.R. §§ 73.1020, 73.3539(a).

⁴ *Grace Baptist Church*, 22 FCC Rcd 4005 (MB 2007).

⁵ *Id.*

⁶ See Letter from Stephen Thomas Yelverton, Esq. (March 28, 2007), at 1 (“Letter”).

⁷ *Id.* at 1 and Attachments.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁸ Section 1.80 of the Rules,⁹ and the Commission's *Forfeiture Policy Statement*.¹⁰ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.¹¹

5. Licensee argues that "the two violations for failing to file a renewal application and unauthorized operation are the same act and therefore the separate forfeitures of \$3,000 and \$4,000 are duplicative. Thus, the forfeiture should be reduced on this basis."¹² We reject this argument. The proposed \$3,000 forfeiture amount for failing to file a timely renewal application for the station is based on the Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules.¹³ The proposed \$4,000 forfeiture amount, in contrast, is for unauthorized operation of the Station under Section 301 of the Act.¹⁴ Failure to file a required form and unauthorized operation are separate and distinct violations of different regulatory and statutory provisions. Therefore, two distinct forfeiture assessments are not duplicative.

6. Licensee next states that the forfeiture should be reduced for "reasons of equity," arguing that Grace Baptist Church was a "new licensee at the time" and "did not have a counsel to advise it on FCC regulations."¹⁵ The Commission has held, however, that violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹⁶ In this context, the term "willful" means that the violator knew that it was taking (or, in this case, not taking) the action in question, irrespective of any intent to violate the Rules.¹⁷ Despite its lack of counsel, Grace Baptist

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² Letter at 1.

¹³ *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁴ *See* 47 U.S.C. § 301.

¹⁵ Letter at 1.

¹⁶ *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (stating that "acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹⁷ *See Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387. *See also Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

Church, as licensee, was ultimately responsible for ensuring that it complied with the Commission's Rules by filing a timely renewal application.¹⁸ Accordingly, we find this argument to be without merit.

7. Finally, Licensee argues that the forfeiture should be cancelled because "the forfeiture would be over twice [the Licensee's] overall surplus for the past three years."¹⁹ The Commission will not consider reducing or cancelling a forfeiture in response to inability to pay unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflect the licensee's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.²⁰ Licensee has satisfied these requirements by submitting notarized profit and loss statements from 2004–06.

8. In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.²¹ In some cases, other financial indicators such as net losses may also be relevant,²² but if gross revenues are sufficiently great, the mere fact that a business is operating at a loss does not by itself mean it cannot afford to pay.²³ In 2004, 2005, and 2006, Licensee had purported gross revenues of \$40,690.59, \$68,529.33, and \$74,499.57, respectively. The proposed \$7,000 forfeiture represents 11.4% of the Licensee's average gross revenue for 2004–06. In considering claims of financial hardship, we have found a forfeiture amount of 5 percent of gross revenue reasonable,²⁴ and the Enforcement Bureau has found that a forfeiture as high as 7.9 percent of the violator's gross revenue was not excessive despite claims of financial hardship.²⁵ Recognizing the financial burden of the proposed \$7,000 forfeiture, we reduce the amount of the forfeiture to \$3,000, or approximately 5 percent of Licensee's average gross revenues for the three-year period prior to issuance of the *NAL*.

9. We have considered Licensee's response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully²⁶

¹⁸ See, e.g., *Educational Media Foundation*, Letter, 23 FCC Rcd 15366 (MB 2008), citing *Request for Waiver by Center City Schools*, Order, 17 FCC Rcd 22424 (2003) ("it is the applicant who has responsibility ultimately for the timely submission of the application.").

¹⁹ Letter at 1.

²⁰ See *Discussion Radio, Inc.*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

²¹ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

²² *Id.*

²³ *Id.*

²⁴ See *CARE Broadcasting, Inc.*, 2010 WL 555912 (MB Feb. 17, 2010) (reducing amount of forfeiture to 5 percent where the proposed forfeiture amount would have constituted approximately 11 percent of Licensee's average gross revenues).

²⁵ See *Coleman Enterprises, Inc.*, Order of Forfeiture, 15 FCC 24385, 24389 (EB 2000), *recon. denied*, 16 FCC Rcd 10023, 10025 (2001).

²⁶ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4387–88.

violated Section 73.3539 of the Rules and willfully and repeatedly²⁷ violated Section 301 of the Act²⁸ and reduce the forfeiture amount to \$3,000.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,²⁹ that Grace Baptist Church SHALL FORFEIT to the United States the sum of three thousand dollars (\$3,000) for willfully violating Section 73.3539 of the Commission's Rules and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.³⁰ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank--Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).³¹ Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.³²

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent, by First Class Certified Mail, Return Receipt Requested, to Grace Baptist Church, 232 South Townline Road, Gaylord, Michigan 49735 and to its counsel, Stephen Thomas Yelverton, Esq., 601 Pennsylvania Avenue, NW, Suite 900, Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁷ Section 312(f)(2) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). *See also Southern California*, 6 FCC Red at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

²⁸ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

²⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

³⁰ 47 U.S.C. § 504(a).

³¹ *See* 47 C.F.R. § 1.1914.

³² *Id.*